

Lecture Notes – Michelle Alexander, *The New Jim Crow*, Ch 3

- Alexander's thesis: Mass incarceration is the latest manifestation of a persistent racial caste system that exists in the US.
 - Earlier manifestations include slavery and Jim Crow.
- What's a caste system for Alexander?
 - A caste system is a kind of social stratification that involves hereditary transmission of one's place in the social hierarchy.
 - It is more rigid, persistent, permanent than social class, and harder to escape.
 - It often involves endogamy (marriage within the same social group), passing down of social roles, occupations, wealth.
 - For Alexander, a caste system is maintained by social norms *and* the legal system.
 - It is also in some way economically, politically, and socially efficacious. It benefits those who are placed higher in the hierarchy.
- Hereditary, chattel slavery
 - Clear stratification between slaves and free persons, hereditarily maintained
 - Since slaves were black, this hierarchy became racialized. For free black persons, there was always the suspicion that one was an escaped slave. Furthermore, with Dred Scot (1857), citizenship and constitutional rights are denied to all black persons.
 - Maintained by social norms and law:
 - Social norms clearly treated black persons as inferior, lazy, unintelligent, and, generally, as property.
 - A number of compromises in the Constitution itself protected this racial caste system.
 - The three-fifths compromise allowed slaves to be counted for purposes of representation and taxation increasing the power of slave holding states.
 - The fugitive slave compromise allowed that slaves who escaped slave territories remained property. Various laws would subsequently be passed to enforce the return of fugitive slaves.
 - The slave trade compromise ensured that no law could be passed banning the slave trade before 1808.
 - In addition, many laws were passed and compromises made to protect the institution of slavery.
 - In 1857, the Dred Scot decision ensured that no black persons would be treated as citizens or granted constitutional rights, legally establishing the races as "subordinate, inferior beings – whether slave or freedmen."
 - Political, Social, and Economic benefits.
 - The maintenance of this caste system ensured greater political power for white, southern land-owners.
 - It was also used as a racial bribe to ensure compliance of poor white people, undermining the possibility of working class solidarity by promising benefits and privileges simply for being white. (See Bacon's Rebellion, 1676, VA)

- Clear economic benefits – free labor.
- Jim Crow
 - After the Civil War, the caste system was forced to redefine itself.
 - Black Codes were passed in 1865 and 1866 to restrict the freedoms of newly freed slaves. An attempt to maintain cheap labor pools and retain political power.
 - Reconstruction Era, federal troops enforce equal access for blacks. We see a rise in political participation by blacks, some economic growth, etc.
 - But, Hayes-Tilden Compromise of 1877 removes federal troops that supported Republican state governments in South Carolina, Florida, and Louisiana.
 - Nearly immediately, new laws begin to show up segregating institutions, disenfranchising black citizens, etc.
 - White supremacist social norms already exist and help to maintain the re-emerging caste system – “Redeemer” governments gain support across the south.
 - Also see the emergence of the “predator” stereotype associated with black men. They are to be feared for their strength, sexual appetite, and lack of self-control. They must be controlled.
 - The Civil War Amendments (13th, 14th, and 15th) end slavery, ensure citizenship, voting rights, due process protection for blacks, but they leave room for disenfranchisement of on the basis of inability to pay poll taxes, pass poll tests, criminal record, etc. They also allow for free labor to be maintained insofar as the 13th Amendment provides for forced labor by convicted felons.
 - *Plessy v. Ferguson* (1896) enshrines the “separate but equal” doctrine, providing for the legality of segregated institutions even in the face of prohibition by the 14th Amendment. The equal protection clause applies to political not social equality.
 - Again, the economic and political benefits are central...cheap labor and a servile labor force for southern agriculture, political power for whites who maintain control, etc.
 - Racial bribe remains a powerful force for breaking working class solidarity.
- Mass Incarceration
 - This all changes with *Brown v. Board of Education* (1954). Reverses Plessy. Separate will never be equal.
 - Schools are desegregated.
 - The Civil Rights Act of 1964 extends desegregation to public places and bans employment discrimination on the basis of race, color, religion, or national origin.
 - The 24th Amendment (1964) makes poll taxes illegal in federal elections; in 1966, the Supreme Court rules them illegal in state elections.
 - The Voting Rights Act of 1965 removes legal barriers that were used to suppress the black vote: literacy tests, misinformation, etc. Also provides federal oversight where non-white voter registration is below 50% and authorizes DOJ to investigate use of poll taxes.
 - The racial caste system again re-invents itself, this time blackness is deeply associated with criminality. A new pattern of racial hierarchy emerges.

- Though *de jure* segregation is now a thing of the past, *de facto* segregation continues to exist. There are many factors that feed into and maintain patterns of segregation:
 - Redlining – the practice of denying loans or insurance to people on the grounds that the neighborhoods in which they live (or what to purchase a home) presents an untenable financial risk to the lender. Redlining was used to create and sustain racially and ethnically homogenous neighborhoods.
 - Real estate agents also played a significant role in this. MLK led neighborhood marches during the Chicago Freedom Movement (open housing movement, 1965-67) that focused on segregation of neighborhoods and marched on real estate offices. They demonstrated, by sending in black activists and then white activists, that real estate agents would refuse to show homes in some neighborhoods to POC (they simply said they had no listings). Culminates in Fair Housing Act of 1968, but practices continue in a variety of ways.
 - Redlined neighborhoods tend to be racially segregated and poor.
 - They lack access to public goods like public transportation.
 - They lack access to quality **education** because schools are funded by local property taxes, they are under-resourced.
 - Schools are *de facto* segregated by race.
 - They lack access to **employment** opportunities
 - Because of lack of education
 - Because of white flight and factories following white workers to suburbs
 - Related to lack of public transportation.
 - They are politically disenfranchised.
 - A result of this segregation paired with lack of education and employment opportunities is an increase in “deviant” behavior, i.e., making ends meet in ways that are not sanctioned by law, drug dealing, drug use, hustling, etc.
 - The perception of poverty and criminality further segregates these neighborhoods...reinforces redlining policies, lack of business investment, lack of access to quality foods/fresh food, etc.
- Subsequently, the war on drugs emerges...law and order policies are used to crack down on anti-war left and civil rights movements, initially linking hippies with weed and blacks with heroin. (Nixon)
 - The criminality of black bodies is reinforced by popular culture and news media – the stereotype of the young, black males as gangster, criminal, drug dealer becomes prominent.
 - The drug war intensifies under Reagan. Policies are adopted that incentivize police departments to crack down on drug dealing and use –

financial incentives include access to grants, seizure of property and money, and access to surplus military equipment.

- Poor, black, urban neighborhoods become an easy target to meet quotas because they are not politically powerful...no blowback.
 - They also tend toward open-air drug markets, open-air use. Easier to go after.
- As crack becomes more prominent, the drug war shifts toward crack down on crack cocaine. Crack is more prevalent in black community, and so they are now doubly targeted.
 - Crack is sentenced at a 100:1 rate compared to powder cocaine (today it's 18:1).
- The war on drugs and crackdown on other crimes in black communities leads to the rise of mass incarceration that is racially skewed.
 - Though whites are just as likely as blacks to use drugs, blacks are overrepresented in drug arrests and convictions.
 - Implicit racial bias also plays a role – blacks are more likely to be stopped by police (both on foot and in vehicles) and more likely to be searched, though they are less likely to be found with contraband (weapons and drugs) in their possession.
- Becomes self-reinforcing...no need for explicitly racial policies to maintain the status quo.
 - Incarceration rates are used as a proxy for rates of criminality. If we don't pay attention to what causes racial disparities in incarceration rates, it's easy to conclude from them that black people are more likely to be criminals.
 - No need for poll taxes or literacy tests...disenfranchisement is a natural effect of criminalization of a population. Felons are barred from voting, in some places for life. They are also imprisoned in mostly white, rural communities and for purposes of the census are counted as residents of those communities rather than the communities from which they came... this leads to under-representation of poor, criminalized black communities.
 - Further erodes economic and social fabric of community.
 - Absent fathers (and mothers).
 - Felons are blocked from housing programs.
 - Felons are blocked from employment opportunities (ban the box campaign).
 - Those with a record (or even who are suspected of gang involvement) are more closely watched by police and more likely to be picked up for future offenses, harassed by police, etc.
 - Also relevant: School-to-prison pipeline. Black students (no matter their class) are treated

more harshly by school disciplinary policies (see recent GAO study). Police as school resource officers tend to disparately impact black students. So students end up with criminal records for minor, in-school offenses.

- Enforcement by law (Immunizing the criminal justice system against claims of racial bias)
 - *McCleskey v. Kemp* (1987) – Unless one can prove that a prosecutor in the particular case had sought the death penalty because of race or that a jury imposed it for racial reasons, statistical evidence does not prove unequal treatment... racially biased outcomes don't matter, only intent does.
 - In Georgia, defendants charged with killing white victims were 4.3 times more likely to receive the death sentence than those killing blacks.
 - Black defendants who killed white victims had the highest chance.
 - Discriminatory sentencing, 100:1 ratio for crack cocaine (now 18:1).
 - *Batson v. Kentucky* (1985) – the all-white jury is maintained. Race is disallowed as an explicit category for striking a juror, but any other pretense is allowed...too comfortable, not comfortable enough, clothing choices, too conservative, too liberal, lack of education, unemployed, single, etc.
 - Because of felony bans, about 30% of black men are barred from jury service for life.
 - *Lyons* – lack of standing to seek remedy for brutality at the hands of LAPD because he would have to allege that he would have another encounter with the LAPD and that all officers routinely use the choke hold in encounters with citizens.
 - *Alexander v. Sandoval* – protects racial profiling by concluding that Title VI of the Civil Rights Act of 1964 does not provide a “private right of action” to ordinary citizens and civil rights groups.
 - Racial profiling is allowed as a factor in police stops, just not the sole factor.
 - It is often the determinative factor.
 - Police and prosecutorial discretion are key to the system.
 - Decisions about how to deploy police in neighborhoods.
 - Broken windows policing
 - Stop and frisk
 - Jump outs
 - Prosecutorial discretion in offering plea bargains and pressuring suspects to plead guilty (even if they are not) by threatening charges that they do not have evidence for.
 - Prosecutorial discretion in seeking penalties.
- 13th Amendment and the for-profit prison system.
 - Mass incarceration is politically useful.
 - Law and Order – see Trump, Sessions.
 - Disenfranchises black communities.

- Mass incarceration is huge economic boon
 - For profit prisons: CCA, for example.
 - Cheap labor
 - At the federal level, the Bureau of Prisons operates a programme known as Federal Prison Industries that pays inmates roughly \$0.90 an hour to produce everything from mattresses, spectacles, road signs and body armour for other government agencies, earning \$500m in sales in fiscal 2016.
 - Similar schemes exist at the state level as well, making the market of 61,000 captive labourers worth well over \$1bn. California's programme expects to generate \$232m in sales this year, much of it from construction and textiles, though \$10m is also expected from meat-cutting. In Idaho, prisoners roast potatoes. In Kentucky, they sell \$1m worth of cattle.
 - <https://www.economist.com/news/united-states/21718897-idaho-prisoners-roast-potatoes-kentucky-they-sell-cattle-prison-labour>